

(2018) 12 UK CK 0025

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1753 Of 2013

Om Deo Mishra

APPELLANT

Vs

Bazpur Co-Operative Sugar Factory Ltd. & Another

RESPONDENT

Date of Decision : 03-12-2018

Acts Referred:

Citation : (2018) 12 UK CK 0025

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Lalit Belwal, T.A. Khan, Mohd. Umar

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. The petitioner to the present Writ Petition has come out before this Court for the relief for the payment of the pay scale of 1350-2040 w.e.f. 13.01.2000 and also to pay a proper scale w.e.f. January, 2000 along with the interest.

2. The brief facts, which has emerged from the Writ Petition, is that the respondents had issued a publication in Amar Ujala on 27.06.1988 for making appointment of Assistant Teachers in Bazpur Cooperative Sugar Factory Inter College. The selection process was conducted and pursuant to it the petitioner was appointed as Assistant Teacher by means of an appointment order dated 22.08.1988 in the scale of 450-15-540-16-636-700-25-720 with the basic pay of Rs.450/-. As a consequence of the appointment letter dated 27.08.1988, the petitioner joined the services on 26.08.1988 and had worked so since then.

3. In the meantime, the petitioner was asked to discharge the work in the Sugar Factory for cane checking and an order to the said effect was passed on 07.02.1989. In the meantime, the recommendations was made by the Government Order dated 04.10.1989, which provided the revision of the scale in the schools, which were being run by the Madhyamic Shiksha Parishad and Inter

Colleges. Raising a claim there were Writ Petitions filed before the Allahabad High Court, which was ultimately decided on transfer by this Court by the judgment dated 26.11.2007.

4. In the Writ Petition the counter affidavit was called for and the respondents in the counter affidavit had come up with the specific case, particularly, in paragraph-2 of the counter affidavit that the school of the respondent is unaided and further more that the services of the petitioner was transferred from College to the Sugar Factory, where he worked from 13.01.2000 on the scale of 1050-1600 with the basic pay 1100/- hence, as a matter of fact, there was reduction in the scale by the order of the respondent, which was candidly accepted by the petitioner without giving a challenge to it, and as a result thereto he was appointed as Clerk in Grade-IV of the Sugar Wage Board of Bazpur Cooperative Sugar Mill.

5. In the Writ Petition when the petitioner has raised claim he has concealed two facts. One of the fact was to the effect that the petitioner himself has submitted an affidavit before the respondent on 1.01.2000, wherein, he has prayed for that his services may be transferred to the Sugar Mill and, accordingly, the said prayer of the petitioner was accepted and his services stood transferred to the Sugar Factory.

6. In the early phase of litigation a Writ Petition was filed by the petitioner being Writ Petition No. 33266/1991 before the Allahabad High Court, which later on after the reorganization of the State was transferred under Section 35 of the Reorganization Act, and was renumbered as Writ Petition (S/S) No. 1414/2007 'Om Deo Mishra vs. President of Committee of Management Bazpur Sugar Factory & Others'. In the Writ Petition as filed before the Allahabad High Court the petitioner had sought for a relief for revision of scale in pursuant to the enforcement of Government Order 04.10.1989, which was made effective w.e.f. 01.01.1986, as a consequence thereto the Education department of Uchta Madhyamic Colleges and Inter Colleges their scale was revised as per the terms contained in the said Government Order. The Writ Petition stood transferred and after the transfer of the Writ Petition the same was taken up by the learned Single Judge of this Court on 26.11.2007 and the same was disposed of with the following observations:

"2. In the present case the Schools is run by the society of the employees of the Cooperative Sugar Factory. The Institution is not on grant-in-aid. The Bazpur Cooperative Sugar Factory Ltd., which is a Central Cooperative Society, has not adopted the Government order dated 04.10.1989 by its resolution.

3. However, it has been stated in the writ petition that the part of the payment has been made to the petitioner on the revised pay scale and other teachers are also being paid salary on the revised pay scale as per the said Government Order. If this fact is true, the Government Order dated 4.10.1989 stands adopted the Bazpur Cooperative Sugar Factory and the rest of the salary on the revised

pay scale shall be paid to the petitioner within a period of one month from today."

7. The direction given therein was conditional, and based on the pleading raised in the Writ Petition on the basis and assumption that Government Order dated 14.10.1989 stood adopted by the Society of Sugar Mill running the institution. This direction was rather be treated to be conditional direction on happening of an event. That is why direction given by the judgment dated 26.11.2007 uses the word "if this fact is true."

8. Apparently, this judgment dated 26.11.2007 has attained finality because, as a matter of fact, alleging non-compliance of the said judgment the petitioner has filed a Contempt Petition, which was decided on 12.09.2011 by another Coordinate Bench of this Court. The finding, which has emerged in the judgment of Coordinate Bench earlier, it has reflected that Cooperative Society of the Sugar Factory employees in fact were running the institution, firstly, it was not an institution, which is in grant-in-aid. Secondly, a specific finding has been recorded that the Bazpur Cooperative Society, which is a Central Cooperative Society, has not adopted the Government Order dated 04.10.1989. The Government Order it contemplated the revision of scale of the teachers, only when it was adopted, it was then only teachers, who were covered and were brought within the purview of the Government Order dated 04.10.1989. Alleging that the said order was not complied with because the learned Single Judge while disposing of the Writ Petition has drawn an inference that if the Government Order dated 04.10.1989 has been adopted by the Cooperative Sugar Factory of the respondent, they would be paid the revised scale within a period of one month from the date of the order.

9. The Contempt Petition as preferred by the petitioner seeking compliance of the judgment it seems a plea was also raised that revised scale was paid, but later on it was withdrawn and was paid till December, 1996, the subsequent stoppage of payment of scale was held to be the fresh action, the contempt was decided by this Court on 12.09.2011, holding thereof that the order of the Writ Court was not complied with since the opposite party admits that the revised scale was not paid to the petitioner after December, 1996, but that in itself may not hold us for a longer period for deciding the matter for the reason being the petitioner admits the fact that all during this period of litigation he contends that initially the revised scale was granted to the petitioners, who were working there as Assistant Teachers w.e.f. 1986 and it was continued to be paid to them till 22.01.2000, when admittedly it was stopped. When the Contempt Court passed an order on 12.09.2011, it left it open for the petitioner that if the subsequent revised pay scale has been stopped it would give a fresh cause of action for which the remedy lies elsewhere and not in a contempt forum:

"If, subsequently the revised pay scale has been stopped, a fresh cause of action arises for which the remedy lies elsewhere, and not in the contempt forum."

10. Meaning thereby, disposal of the Contempt Petition was with the conscious

consideration of the action, which was taken later, i.e. a conscious direction that it was a stopping of a revised scale, it was giving cause of action to the petitioner to file the present Writ Petition.

11. In the Writ Petition in question the petitioner has prayed for the following reliefs:

"(a) Issue a writ, order or direction in the nature of mandamus directing the respondents to give proper pay-scale since January, 2000 along with difference in the pay -scale with interest as well as difference in annual increments, D.A., etc. along with interest.

(b) Issue a writ, order or direction in the nature of mandamus directing the respondents to pay arrears of pay-scale, D.A., annual increments and bonus along with interest since August, 1988 to December, 1999.

(c) Such other relief be granted which this Hon'ble Court may deem fit and proper.

(d) Award cost to the petitioner."

12. A Writ of mandamus has been sought without challenging the action of stoppage dated 22.01.2000 that he may be paid with the revised pay scale since January, 2000 pursuant to the Government Order dated 04.10.1989, which according to the petitioner's version and as per the interpretation is based on the fact, which the petitioner has derived from the pleadings raised in the counter affidavit that, as a matter of fact, when the scale was paid to them w.e.f 1986 till January, 2000, it would amount to be an adoption of the Government Order dated 04.10.1989 by the respondents, which would entitle the petitioner to the revised scale under the aforesaid Government Order, whereas, on the contrary the respondents have specifically pleaded in the counter affidavit as well as in the supplementary affidavit filed on 10.08.2018 petitioner would not be entitled for revised scale based on the Government Order dated 4.10.1989, and, in particular, in the light of the decision taken by the District Education Officer on 04.05.1990, wherein, following observation has been made that the appointment of the petitioner and such other four teachers were not made in accordance with Section 18 of the Secondary Education Act, as the post was never sanctioned by the State Government. Besides it, it was observed that, as a matter of fact, the post against which the petitioner was working was not even got approved by the District Education Officer or by the Bazpur Cooperative Sugar Factory, Nainital. Thus, they would not be covered by the payment of salary rules to the teachers. It has been also recorded that teachers like petitioner have been appointed exclusively by Bazpur Cooperative Sugar Factory and their salary is exclusively paid by the factory only.

13. It was further observed by the District Education Officer in his order dated 04.05.1990 that the scale though, it was revised by the Government Order dated 04.10.1989, but it would not apply to the Sugar Factories because the same

never stood adopted by them. This controversy of seeking a revision of scale by way of a mandamus could be confined to the following inference, which could be drawn on consideration of the rival claim raised by the parties to the Writ Petition.

14. Admittedly, the status of the college in which the petitioner contends to be working and at the time when the claim was raised by the petitioner pursuant to the Government Order dated 4.10.1989, as a matter of fact, was not an institution, which was grant-in-aid. Secondly, according to the finding of the judgment dated 26.11.2007 of which the compliance was sought for by the petitioner he by seeking enforcement of the said judgment admits the fact and the finding recorded therein that the Government Order dated 4.10.1989 never stood adopted. Thirdly, it is also an admitted position in accordance with the finding recorded by the Contempt Court the contempt order dated 12.09.2011, held that withholdment of the salary by virtue of an order dated 22.01.2000, as a matter of fact, was giving a fresh cause of action. If that be so, atleast the petitioner was conscious of the act of reduction of salary w.e.f. January, 2000, if that be so, the claim for revision of scale based on the Government Order dated 04.10.1989 cannot be granted by way of issuance of writ of mandamus in the absence of there being specific challenge given to the order dated 22.01.2000, whereby, the salary already granted to the petitioner had been curtailed.

15. In that view of the matter, this Court does not find any merit in the Writ Petition. The same is, accordingly, dismissed.

16. There would be no order as to cost.